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10/575,161	07/10/2006	Jacob Johan Schildmeijer	2001-1441	6827
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EXAMINER				
KENNEDY, TIMOTHY J				
ART UNIT		PAPER NUMBER		
1791				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/575,161

Applicant(s)

SCHILDEMEIJER, JACOB JOHAN

Examiner

TIMOTHY KENNEDY

Art Unit

1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2006.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-25 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 12-25 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 10 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date 4/10/06
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Examiner wishes to point out to applicant that claims 16-25 are directed towards an apparatus and as such will be examined under such conditions. The material worked upon or the process of using the apparatus is viewed as recitation of intended use and is not given patentable weight (Please see MPEP 2114 R1-2115 R2 for further details).

4. Claims 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Von Wilcken et al (EP 0379148, already of record, using machine translation for English equivalent, herein after referred to as Von Wilcken EP), in view of Von Wilcken et al (DE 10048842, already of record, using machine translation for English equivalent, herein after referred to as Von Wilcken DE). Regarding claim 12, Von Wilcken EP teaches:

5. Method for laying a section of railway comprising a railway track consisting of two rails and sleepers by means of which the rails are linked to one another, and a foundation on which the railway track is supported (English abstract, last paragraph of English translation on page 3 of 7, and Figures 1, 4, and 5)
6. Preparation of the foundation (Figure 1, part 10)
7. Supporting the railway track with banking some distance above the foundation (Figure 8)
8. Pouring concrete between the sleepers and the foundation (Figure 1, parts 20 (sleepers), 10 (foundation), and 12 (concrete))
9. Making the banking of the railway track and the foundation different (Figure 8)
10. Pouring the concrete by means of several discharge openings that are alongside one another in the transverse direction (paragraph 10 of English translation on page 5 of 7, and Figures 4 and 5 parts 92, 94, and 96)
11. Setting the discharge openings at heights that differ from one another.
12. Von Wilcken EP teaches pressure plates (Figure 4, part 142) to create the banking shown in Figure 8 (paragraph 6 of English translation on page 6 of 7), but does not teach that the discharge openings are at different heights.
13. In the same field of endeavor, Von Wilcken DE teaches actuators that can tilt one side of the rail laying device to create banking in the track (paragraph 4 of English translation on page 8 of 15, and Figures 11 and 12, parts 66, 68, 70, and 7)
14. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the actuators as taught by Von Wilcken DE, using the

method of Von Wilcken EP to tilt one half of the rail laying device. This tilting would adjust the discharge openings to be at different heights, for the purpose of creating banking in the concrete without the additional need of a mechanical stamper.

15. Regarding claim 13:

16. Viewed in the transverse direction, pouring different amounts of concrete per unit length of the width of the railway track

17. The combination of Von Wilcken EP and Von Wilcken DE as laid out above would teach pouring different amounts of concrete per unit length of the width of the railway track, when viewed in the transverse direction. Since Von Wilcken EP teaches the concrete discharge opening, and Von Wilcken DE teaches tilting one half of the rail laying device, when concrete is poured different amounts of concrete will be poured due to the angle of inclination, and the different heights of the discharge openings.

18. Regarding claims 14 and 15:

19. Setting the discharge openings at essentially the same distance with respect to the sleepers

20. The combination of Von Wilcken EP and Von Wilcken DE as laid out above would teach setting the discharge openings at essentially the same distance with respect to the sleepers. This is due to the fact that the sleepers would also be inclined along with the discharge openings, due to the angle of the banking.

21. Regarding claim 16:

22. The Examiner is examining claim 16 as an independent claim, and claims 17-25 as dependents thereof.

23. Von Wilcken EP teaches:

24. Device for carrying out the method according to claim 12 for laying a section of railway with a railway track consisting of two rails as well as sleepers by means of which the rails are linked to one another, and a foundation on which the railway track is supported (English abstract, last paragraph of English translation on page 3 of 7, and Figures 1, 4, and 5)

25. Comprising a chassis (Figure 5, part 82) that can be moved along and over the section of railway (Figure 4), which chassis has several discharge openings (paragraph 10 of English translation on page 5 of 7, and Figures 4 and 5 parts 92, 94, and 96)

26. Which are alongside one another viewed in the transverse direction of the chassis (paragraph 10 of English translation on page 5 of 7, and Figures 4 and 5 parts 92, 94, and 96), as well as means for feeding ready-mix concrete to said discharge openings (Figure 4, parts 118 and 120)

27. Von Wilcken EP does not teach:

28. The height of which [discharge openings] can be adjusted relative to the chassis nor characterized in that the discharge openings can be set heights that differ from one another

29. In the same field of endeavor, Von Wilcken DE teaches actuators that can tilt one side of the rail laying device to create banking in the track (paragraph 4 of English translation on page 8 of 15, and Figures 11 and 12, parts 66, 68, 70, and 7)

30. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the actuators as taught by Von Wilcken DE, using the device

of Von Wilcken EP to tilt one half of the rail laying device. This tilting would adjust the discharge openings to be at different heights relative to the chassis and each other, for the purpose of creating banking in the concrete without the additional need of a mechanical stamper.

31. Regarding claim 17, Von Wilcken EP further teaches:

32. The discharge openings are linked to one another (Figure 5)

33. Claims 18-25 rejected under 35 U.S.C. 103(a) as being unpatentable over Von Wilcken EP and Von Wilcken DE as applied to claims 12 and 16 above, and further in view of Scheuchzer et al (U.S. Patent 4,000,699; herein after referred to as Scheuchzer). Regarding claim 18, Von Wilcken EP and Von Wilcken DE do not teach:

34. In combination, a device according to Claim 16, as well as support tracks that can be installed on the foundation for the section of railway to be laid in order to support the device

35. In the same field of endeavor Scheuchzer teaches a second set of rails to support track servicing equipment (Figure 2, column 1 lines 9-17)

36. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the support tracks as taught by Scheuchzer using the device of Von Wilcken EP and Von Wilcken DE, so as to support the track laying device.

37. Regarding claim 19, Scheuchzer, for the previously stated reason, teaches:

38. Combination according to Claim 17, wherein auxiliary vehicles are provided that have wheels and the support tracks have a channel shape; in which channel shape the

roller members can be accommodated (Figure 9, parts 2 and 37; part 2 channels the wheel 37)

39. Regarding claim 20, Von Wilcken EP further teaches:

40. Combination according to Claim 18, also comprising a hopper for a quantity of ready-mix concrete, as well as means for transferring the ready-mix concrete from the hopper to the discharge openings (Figure 4, parts 118 and 120 and paragraph 10 of English translation on page 5 of 7, and Figures 4 and 5 parts 92, 94, and 96)

41. Regarding claim 21, Von Wilcken DE further teaches:

42. Combination according to Claim 18, wherein the device has wheels that can be supported on the rails (Figure 8, parts 110 and 142)

43. Regarding claim 22, see remarks above with regards to claim 18

44. Regarding claim 23, see remarks above with regards to claim 20

45. Regarding claim 24, see remarks above with regards to claim 21

46. Regarding claim 25, see remarks above with regards to claim 21

Conclusion

47. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. All remaining documents from the IDS is considered pertinent to applicant's disclosure, but have not been cited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TIMOTHY KENNEDY whose telephone number is (571) 270-7068. The examiner can normally be reached on Monday to Friday 9:00am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Del Sole can be reached on (571) 272-1130. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

tjk

/Joseph S. Del Sole/
Supervisory Patent Examiner, Art Unit 1791